

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



75-4092

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 75-4092

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SIMCHA RAIZMAN,

Petitioner,

-v.-

IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent.

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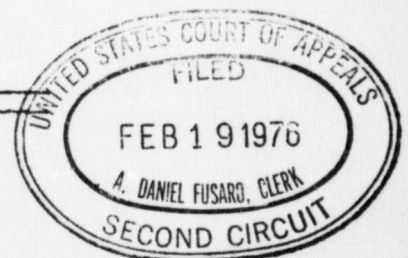
ON PETITION TO REVIEW DEPORTATION ORDER  
UNDER 8 U.S.C. 1105(a)

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PETITIONER'S SUPPLEMENTAL BRIEF  
AND SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 75-4092

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SIMCHA RAIZMAN,

Petitioner,

against

IMMIGRATION AND NATURALIZATION SERVICE,

Defendant.

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On Petition to Review Deportation Order  
Under 8 U.S.C. 1105(a)

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PETITIONER'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL STATEMENT OF THE ISSUES PRESENTED  
FOR REVIEW

1. Whether the Dangerous Drugs Ordinance of 1936, of Israel, i.e., sections 4, 7, and 16, make guilty knowledge on the part of the accused irrelevant.
2. Whether the Customs Ordinance (New Version) 5717, of Israel, i.e., section 212(a)(6), makes guilty knowledge on the part of the accused irrelevant.
3. Whether that section of the Customs Ordinance was "a law or regulation relating to the illicit possession of

\*\*\* marihuana."

4. Whether the foregoing foreign laws impose absolute liability.

SUPPLEMENTAL STATEMENT OF THE CASE

At the time of the pre-argument conference between the attorneys for the parties herein and the Staff Counsel of this Court, held on January 23, 1976, petitioner's attorney advised that he was that day serving and filing his brief on the only issue that he had been able to brief by that date, i.e., whether a conviction for possession of hashish was the same as a conviction for possession of marihuana, within the meaning and intent of Sec. 212(a)(23) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(23)).

At that conference, petitioner's attorney further advised that he desired additional time within which to serve and file a supplemental brief and a supplemental appendix on another issue which might be entirely dispositive of the matter before the Court because of this Court's decision in the Lennon case, without the necessity of having the Court decide the hashish/marihuana issue.

That additional issue involved the question of whether the Israeli statutes under which the petitioner was convicted, made guilty knowledge irrelevant in a prosecution for possession of a prohibited substance.

Petitioner's Counsel pointed out at that time, however, that until he was in receipt of a legal opinion from Israel, to be rendered by Leon Fine, Esq., a member of the

New York State and Israeli Bars, he was not in a position to supplementally brief that additional issue.

Staff Counsel granted the request of the petitioner's counsel and entered an order that day fixing February 17, 1976 as the date by which petitioner's supplemental brief and appendix were to be filed. However, the required legal opinion from Israel, dated February 11, 1976, was not physically received by petitioner's counsel until February 17, 1976, and, until so received, this supplemental brief and supplemental appendix could not be prepared earlier.

The original of the legal opinion of Leon Fine, Esq., consisting of six pages, sworn to by him before the Consul General of the United States, at Tel-Aviv, Israel, on February 11, 1976, to which are appended twelve pages of copies of the Israeli statutes involved, will be exhibited to this Court at the time of oral argument of the case. In the meantime, photocopies of the same are set forth in petitioner's supplemental appendix.

On October 5, 1967 the respondent was convicted in Israel of an offense contrary to Sections 4 (attempt), 7 and 16 of the Dangerous Drugs Ordinance of 1936, and contrary to Section 212(a)(6) of the Customs Ordinance (New Version) 5717 (two counts). Such convictions are set forth in the "Verdict" of the Israeli court, which is included in the Administrative Record on file (Item numbered "18").

This supplemental brief devotes itself solely to the issue of whether an accused could be convicted in Israel in 1967 for violation of its Dangerous Drugs Ordinance, and of

its Customs Ordinance, under statutory language which made guilty knowledge on the part of the accused irrelevant; and whether the Customs Ordinance was a "law or regulation relating to the illicit possession of \* \* \* marihuana"(Sec. 212(a), Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)).

#### POINT I

#### THE DANGEROUS DRUGS ORDINANCE OF ISRAEL MAKES GUILTY KNOWLEDGE ON THE PART OF THE ACCUSED IRRELEVANT, AND IMPOSES ABSOLUTE LIABILITY

On October 7, 1975 this Court decided the case of Lennon v. Immigration and Naturalization Service, unreported, Docket No. 74-2189. The opinion in that case was written by Chief Judge Kaufman, and found in Lennon's favor on the ground that the British statute under which Lennon had been convicted of possession of hashish made guilty knowledge of the accused irrelevant; and on the further ground that Section 212(a)(23) of the Immigration and Nationality Act does not exclude aliens convicted under a foreign law that imposes absolute liability.

The language of the British statute under which Lennon was convicted was described by Chief Judge Kaufman as being "deceptively simple", and was set forth by him, as stating:

"A person shall not be in possession of a drug, unless \* \* \* authorized \* \* \*."

The legal opinion of Leon Fine, Esq., quotes Section 7 of the Dangerous Drugs Ordinance (of Israel) as being the pertinent section involved and as

providing that:

"\* \* \* no person shall be in possession of any dangerous drug \* \* \* unless \* \* \* authorized \* \* \*."

Mr. Fine's legal opinion sets forth the genesis of the Dangerous Drugs Ordinance, under scrutiny here, in the year 1936 under the British Mandate for Palestine (now Israel); its parallel with the British statute and common law; its presumption that the accused knew that he was in possession of a dangerous drug if his possession was unauthorized; the shifting of the burden to the accused to prove his innocent knowledge of the substance involved; that if an accused knew that he was in possession of something and had either the opportunity or the duty to determine, under the circumstances, whether or not the same was a dangerous drug, no further "guilty knowledge" or mens rea is required to justify a conviction (par."23"); and his conclusion that under Israeli law there was in effect, no necessity for the prosecution to allege or prove a specific "guilty knowledge" on the part of the accused regarding charges of violations of Section 7 of the Dangerous Drugs Ordinance (par."27").

The foregoing are only condensations by petitioner's counsel of the detailed statements set forth in Mr. Fine's legal opinion, and the Court is respectfully referred to the entire legal opinion, as set forth in the annexed appendix hereto.

It is felt that a careful reading of Mr. Fine's legal opinion and of the Israeli statute involved establishes that the Dangerous Drugs Ordinance (of Israel), as it stood

in 1967, made guilty knowledge on the part of the accused irrelevant, and also imposed absolute liability.

Consequently, the rule laid down by this Court in the Lennon case should apply in this case equally as dispositive of the issue.

#### POINT II

THE CUSTOMS ORDINANCE OF ISRAEL MAKES GUILTY KNOWLEDGE ON THE PART OF THE ACCUSED IRRELEVANT, AND IMPOSES ABSOLUTE LIABILITY.

Mr. Fine's legal opinion goes into detail as to the genesis of the Customs Ordinance of Israel, its language and its interpretation. He concludes that a defendant tried pursuant to Section 212(a)(6) in connection with dangerous drugs or any other substance, lawful or unlawful, could be duly convicted under Israeli law, even though there is no allegation or proof on behalf of the prosecution that he in fact knew that his statement was incorrect or untrue (par."38").

Again, the rationale which decided the Lennon case should be applied here as well.

#### POINT III

THE APPLICABLE SECTION OF THE CUSTOMS ORDINANCE OF ISRAEL IS NOT A "LAW OR REGULATION RELATING TO THE ILLICIT POSSESSION OF MARIHUANA".

The denial of petitioner's eligibility for adjustment of status, the ultimate effect of which was to make him excludable, and, therefore deportable from this Country, was based upon the claim that all of his convictions in Israel

were under "any law or regulation relating to the illicit possession of \* \* \* marihuana" (Sec.212(a)(23) of the Immigration and Nationality Act, as amended, 8 U.S.C.1182 (a)(23)).

Mr. Fine's legal opinion makes it clear that neither the Customs Ordinance in general nor the section thereof under which conviction took place relates specifically to the illicit possession of dangerous drugs, nor is the violation a result of the evasion of payment of customs duties payable for same (par."33"). Further, that the section in question pertains to declarations or statements, both oral and written, which pertains to any article of goods which are referred to in any declaration or document furnished to a Customs Officer (par."29"); that the statement could refer to either lawfully possessed articles and goods or prohibited substances such as contraband or dangerous drugs (par."32").

Clearly, this is not a "law or regulation relating to the illicit possession of marihuana", and the excludability charge based upon the conviction under the sub-section of this statute (Customs Ordinance) must fall.

#### CONCLUSION

For the reasons set forth herein, it is respectfully urged that the decision of the Board of Immigration Appeals, denying adjustment of status and ordering deportation, be rejected.

Dated: February 17, 1976.

Respectfully submitted,

EDWARD L. DUBROFF  
Attorney for Petitioner  
50 Court Street  
Brooklyn, New York, 11201.

S U P P L E M E N T A L

A P P E N D I X

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City of Tel-Aviv - Jaffa  
State of Israel  
Embassy of the U.S.A.

LEON FINE, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practise law in the State of Israel, was admitted to the Bar and have been a member in good standing of the Israel Bar Association since 1966 and am the holder of Lawyer's license # 4713 and maintain an office at 6 Malkay Israel Square, Tel-Aviv.
2. I am a graduate of the University of Cincinnati (B.A.) and New York University School of Law (LLB) and was admitted to practice in New York State (First Department) in 1955 and was engaged in the general practice of law in New York City until 1961 when I settled in Israel.
3. I served as a Law Clerk in the Ministry of Justice and as an assistant to the Tel-Aviv District Attorney (Criminal Division) before commencing private law practice in 1968.
4. I have been the legal advisor to the Voluntary Public Organization in Israel dedicated to the battle against drug abuse and the contribution of aid and assistance in the rehabilitation of drug addicts; I also served as the representative of the said Organization to the Inter-Ministerial Committee in Israel, under the auspices of the Attorney-General, for the formulation and co-ordination of policy regarding drug abuse.
5. I submit this Affidavit as my considered legal opinion, at the request of Edward L. Dubroff, Esq. of 50 Court Street, Brooklyn, New York.
6. The abovenamed attorney has asked me to submit an authentic photocopy of Hebrew and English versions of Sections 4, 7 and 16 of the Dangerous Drugs Ordinance of 1936 and Section 212 (A)(6) of the Customs Ordinance (New Version) as they existed on October 5, 1967. I have been asked to submit my legal opinion under oath, in Affidavit form, confirmed by the U.S. Consul, as follows:-

Whether the laws above referred to and judicial decisions interpreting same make guilty knowledge by the Defendant, irrelevant or not.

7. I attach hereto, as Appendix A, a photocopy of the requested Sections of the Dangerous Drugs Ordinance<sup>in its entirety</sup>, in the original English language version of same. 17
8. I attach herewith, as Appendix B, a photocopy of the Hebrew language, official version of the Customs Ordinance<sup>(section 212(a))</sup> (New Version) and the official English language version of same published in volume 1 of the English translation of the Laws of the State of Israel and published by the Government Printer. 17
9. The Dangerous Drugs Ordinance was codified in Israel - then Palestine - in 1936 by the Palestine Mandate authorities, who were the lawful government in power at the time, pursuant to decision of the League of Nations.
10. The law appeared in the official newspaper, i.e. The Palestine Gazette in 1936 and was published by the Government Printing Press in Jerusalem.
11. The Dangerous Drugs Ordinance of 1925 and the subsequent amendments thereto were repealed therein.
12. The Law was also published in the 3 volume Revised Laws of Palestine and edited by Robert Drayton, Esq., who was officially entitled Legal Draftsman of the Government of Palestine.
13. The next recodification of the Law occurred in 1973 with the enactment of the Dangerous Drugs Ordinance (New Version), which was a recodification of the Dangerous Drugs Ordinance of 1936 with revisions and additions thereto.
14. Sections 4 and 16 are not pertinent to this question, since they relate respectively, to export and import of drugs and the penalties for violation of offenses under the Ordinance.

15. Paragraph 7 of the Law prohibits possession of what is regarded as Dangerous Drugs. The precise language therein .... "no person shall be in possession of any dangerous drug... unless authorized, etc." is very similar to the law of Great Britain (<sup>Dangerous</sup> Drug Acts - ~~which states...~~) which states:... "a person shall not be in possession of a drug...unless authorized".. JF
16. The law in Israel as it existed in 1967 was clearly based, and to a great extent, copied from the British Statute. In cases regarding unauthorized possession of Dangerous Drugs in Israel, there is what amounts to a presumption that Defendant knew that he was in possession of Dangerous Drugs. Following proof of possession, the Prosecution need not prove a specific guilty knowledge of same by the Defendant.
17. There is nothing in the Statute or in any judicial (<sup>Israeli</sup>) precedent which elucidates the extent to which possession, in and of itself, constitutes a criminal violation under this Law. If any evidentiary burden of proof remains with the Prosecution following its proving possession, that burden is a very small and fragile one. JF
18. The burden of proving a lack of guilty knowledge, in effect would be the duty of the Defendant in said circumstances, i.e. where proof has been offered of possession of a Dangerous Drug. Section 31(2) of the New Version of the Law codifies in a statutory form what was, and is in effect the situation in this connection, as follows:..."in a trial of a violation in connection with a drug, the Defendant is presumed to have known that the drug was dangerous, and he who claims in his defense that he did not know this, must prove same!"
19. As above stated, neither the new version of this Law, nor the Law of 1936, as it existed in 1957, makes any determination regarding the rules of evidence or proof required in connection with proving the said violations.
20. <sup>However,</sup> In Section 7(2) the meaning of possession is considerably broadened to include both actual custody, i.e. physical JF

or constructive custody, i.e. <sup>an object</sup> being held by another person subject to his control, or for him or on his behalf.

This definition is in line with the ordinary English language layman's understanding of possession and with the English Common Law definition of "possession", which emphasizes the fact of physical control or de facto control over the object, rather than the mental element of the person in possession.

21. I have not been able to find any significant judicial ruling regarding this point. It is my opinion that the Law does not impose an absolute liability in every case where possession has been proven and some mental element is required. However, this is not the ordinary mens rea which is required in the usual criminal violation under Common Law *in Israel*.
22. A conviction could be warranted, unless it was clear that there was absolutely no mental element on the part of the Defendant, i.e. a total ignorance of the fact that he was in possession or control of the item in question.
23. If he knew that he was in possession of something and had either the opportunity or the duty to determine, under the circumstances, whether or not same was a Dangerous Drug, no further "guilty knowledge" or mens rea is required to justify a conviction.
24. Israeli law and judicial precedent have to a great extent replaced the laws enacted during the British Mandate in Palestine; <sup>nevertheless,</sup> the Dangerous Drugs Ordinance existing today - and to a greater extent in 1957 - was and remains a statute enacted by the authorities of the British Government and based on the English law pertaining thereto.
25. This is so, since one of the first, basic acts of the Government of the State of Israel was a legislative declaration that the law existing in Palestine on May 14, 1948 would continue in force as far as same was not in conflict with any law enacted thereafter (by the newly born State of Israel).

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26. The adoption of this fundamental law ("Law and Administration Ordinance 1948") gave validity to the continued application not only of the pre-existing Mandatory legislation, but to the principles of English Common Law and the doctrines of equity in force in England; <sup>to the extent that Israeli judicial precedent does not clearly interpret</sup> any law. English judicial decisions would be applicable.
27. On the basis of the foregoing, it is my legal opinion that in 1957, under Israeli Law, there was in effect, no necessity for the Prosecution to allege or prove a specific "guilty knowledge" by the Defendant regarding charges of violations of Section 7 of the Dangerous Drugs Ordinance. There is no judicial ruling that the law imputes absolute liability, but the exact extent, if any, to which "guilty knowledge" must be proven remains limited and vague.
28. The Customs Ordinance is also a result of ~~the~~ Mandatory legislation which underwent various changes and amendments and was finally redrafted in 1957.
29. Sections 207 to 223 relate to violations of same. Section 212 was sub-titled, "other customs offenses."
30. Subsection (A)6 pertains to declarations or statements, both oral and written, which pertain to any article or goods which are referred to in any declaration or document furnished to a Customs Officer.
31. The "statement" which if <sup>necessarily</sup> untrue or incorrect, becomes a criminal offense, does not <sup>refer</sup> (solely) to a prohibited substance such as a Dangerous Drug, but may include a "statement" referring thereto.
32. One may be charged and convicted under this sub-section in connection ~~with~~ a statement referring to either lawfully possessed articles and goods or prohibited substances such as contraband or Dangerous Drugs.

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7-6

Neither the Ordinance in general nor this Section thereof relates specifically to the illicit possession of Dangerous Drugs, nor is the violation a result of the evasion of payment of customs duties payable for same.

Section 212(A)(6) makes it a criminal offense to make any statement, orally or written, which statement is untrue or incorrect in any particular.

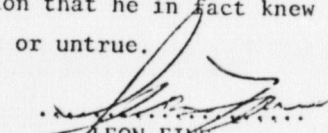
5 The Prosecution is not required to state or prove that the Defendant actually intended to defraud or cheat the Customs authorities, nor even that the person making said statement had a specific guilty knowledge of the incorrectness or untruth of same.

30 It is sufficient if it is proven that the statement was untrue or incorrect and that same was not due to an honest error or inadvertence. The Defendant may be convicted, therefore, even if he knew or should have known if <sup>he</sup> had taken proper steps to determine the correctness or truthfulness of the statement. Negligence on his part, therefore, can also constitute the "guilty knowledge" that is required ordinarily by mens rea.

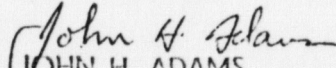
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35 The ruling precedent in this matter which clarifies the above doctrine in the holding of the Israeli Supreme Court in Criminal Appeal 165/56, Gobernack et al vs. Attorney-General.

38 Based on the foregoing, a Defendant tried pursuant to Section 212(A)(6) in connection with Dangerous Drugs or any other substance, lawful or unlawful, could be duly convicted under Israeli law, even though there is no allegation or proof on behalf of the Prosecution that he in fact knew that his statement was incorrect or untrue.

  
LEON FINE

in to before me this 11th day of February, 1976.

  
JOHN H. ADAMS  
Consul of the United States  
of America

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126 (11/27, 1/31 101) 107

104 A Dangerous Drugs Ordinance

No. 17 of 1936

1300 10/11/36

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ORDINANCE NO. 17 OF 1936, CONCERNING THE CONTROL OF THE MANUFACTURE, IMPORTATION, EXPORTATION AND SALE OF CERTAIN DANGEROUS DRUGS.

Enacted by the High Commissioner for Palestine, with the advice of the Advisory Council thereof:—

Enacted

1. This Ordinance may be cited as the Dangerous Drugs Ordinance, 1936.

Definitions

2. In this Ordinance and in the schedule hereto and in any rules made hereunder:—

4/11/36 10/11/36

(a) "Dangerous drugs" means the substances specified in the schedule to this Ordinance ~~and any other substances as may be declared dangerous drugs from time to time by the High Commissioner by notice published in the Gazette.~~

(b) "Raw opium" means the spontaneously coagulated juice obtained from the capsules of the *Papaver somniferum* L., which has only been submitted to the necessary manipulations for packing and transport, whatever its content of morphine.

(c) "Prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked.

(d) "Medicinal opium" means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British or French pharmacopoeia, whether in powder form or granulated or otherwise, or mixed with neutral materials.

(e) "Coca leaves" means the leaves of any plant of the genus *Erythroxylum*, from which it may be possible to extract cocaine either directly or by chemical transformation.

(f) "Indian hemp" means the dried flowering or fruiting tops of the pistillate plant *Cannabis sativa* L., from which the resin has not been extracted, by whatever name such tops are called.

(g) "Ergonine" means laevo-ergonine and includes any derivatives of ergonine from which it may be recovered industrially.

- denance*
- A-7*
- (h) "Import authorization" means an authorization issued by a competent authority authorizing the importation of a specified quantity of a dangerous drug, and containing full particulars of the drug together with the name and address of the person authorized to import the drug, the name and address of the person from whom the drug is to be obtained, and specifying the period within which the importation must be effected.
- (i) "Export authorization" means an authorization issued by a competent authority in a country from which a dangerous drug is exported, containing full particulars of such drug, and the quantity authorized to be exported, together with the names and addresses of the exporter and the person to whom it is to be sent, and stating the country to which, and the period within which, it is to be exported.
- (j) "Diversion certificate" means a certificate issued by the competent authority of a country through which a dangerous drug passes in transit, authorizing the diversion of such drug to a country other than that specified as the country of ultimate destination in the export authorization, and containing all the particulars required to be included in an export authorization, together with the name of the country from which the consignment was originally exported.
- (k) "Conveyance" includes ship, motor vehicle, aircraft, train and any other means of transport by which goods may be brought into or taken from Palestine.
- (l) "In transit" means taken or sent from any country and brought into Palestine by land, air, water (whether or not landed or transhipped in Palestine) for the sole purpose of being carried to another country either by the same or other conveyance.
- (m) "Export" with its grammatical variations and cognate expressions, in relation to Palestine, means to take or cause to be taken out of Palestine by land, air or water, otherwise than in transit.
- (n) "Import" with its grammatical variations and cognate expressions, in relation to Palestine, means to bring or cause to be brought into Palestine by land, air or water, otherwise than in transit.
- (o) "Convention" shall denote the International Opium Convention signed at Geneva on the nineteenth day of February, 1925.
- (p) "Convert" or "Conversion" shall denote the transformation of a drug by a chemical process with the exception of the transformation of alkaloids into their salts.

90.11.11/11

(p) "Manufacture" shall include any process of refining and the transformation of alkaloids into their salts.

(q) "Director" means the Director of Medical Services or an officer authorized by him.

(r) "Magistrate" has the meaning defined by section 72 of the Penal Code Ordinance, 1921.

(s) "Corresponding law" means any law stated in a certificate purporting to be issued by or on behalf of the Government of any country outside Palestine to be a law providing for the control of the manufacture, sale, use, export and import of drugs in accordance with the provisions of the International Opium Convention signed at The Hague on the twenty-third day of January, 1912, and also of the International Opium Conventions signed at Geneva on the nineteenth day of February, 1925, and on the thirteenth day of July, 1931, respectively, and any statement in such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, shall be conclusive.

3. The power to grant import and export authorizations in respect of consignments of dangerous drugs which may lawfully be imported into or exported from Palestine, and to grant diversion certificates in respect of consignments of dangerous drugs in transit through Palestine which may lawfully be diverted to a destination other than that to which they were originally consigned, is hereby conferred on the Director of Medical Services.

4. Any person who exports or imports or facilitates the export or import of, or sells or otherwise supplies to any person any dangerous drugs shall be guilty of an offence under this Ordinance:

Provided that no person shall be deemed to be guilty of an offence who:—

(a) exports or imports or facilitates the export or import of any of the drugs mentioned in part II of the schedule to this Ordinance under a valid and subsisting export or import authorization and in accordance with the terms of this Ordinance and the rules made thereunder, or

(b) sells or otherwise supplies to any person any of the drugs mentioned in part II of the schedule to this Ordinance in accordance with the terms of this Ordinance and the rules thereunder.

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5.—(1) Any person who conveys any dangerous drugs through Palestine in transit, shall be guilty of an offence under this Ordinance unless:—

Conveying,  
diverting,  
removing or  
tampering with  
dangerous drugs  
in transit

(a) the drug is in course of transit from a country from which it may be lawfully exported to another country into which such drug may lawfully be imported; and

(b) except where the drug comes from a country not a party to the Convention, it is accompanied by a valid and subsisting export authorization or diversion certificate, as the case may be.

(2) No person shall, except under the authority of a diversion certificate, cause or procure any dangerous drug brought into Palestine in transit to be diverted to any destination other than that to which it was originally consigned. In the case of any drug in transit accompanied by an export authorization or a diversion certificate issued by a competent authority of some other country, the country to which the drug was originally consigned shall be deemed to be the country stated in such export authorization or diversion certificate to be the country of destination.

(3) No person shall except under and in accordance with a removal permit issued by the Director of Customs, Excise and Trade:—

(a) remove any dangerous drug from the conveyance by which it is brought into Palestine in transit; or

(b) in any way move any such drug in Palestine at any time after removal from such conveyance.

In all cases it shall be in the absolute discretion of the Director of Customs, Excise and Trade to issue or refuse a removal permit as he shall deem fit.

(4) No person shall subject any dangerous drug in transit to any process which would alter its nature, or wilfully open or break any package containing a dangerous drug in transit except upon the instructions of the Director and in such manner as he may direct.

(5) Where any consignment of dangerous drugs is carried in transit through Palestine, it shall be lawful for the Director of Customs, Excise and Trade or an officer authorized by him to require the production of the export authorization or diversion certificate relating to the consignment and to take such further action in respect of the consignment as may be prescribed by rules made under this Ordinance.

(6) Nothing in this section contained shall be deemed to apply to any dangerous drug in transit by post or in transit by air if the

from doing under this section shall be guilty of an offence under this Ordinance.

aircraft passes over Palestine without landing, or to such quantities of dangerous drugs as may, *bona fide*, reasonably form part of the medical stores of any ship or aircraft.

*creating an offence*

No person shall cultivate, manufacture or prepare any dangerous drugs mentioned in part I of the schedule, or manufacture, prepare or convert any drug obtained from any of the phenanthrene alkaloids of opium or from cocaine alkaloids of the coca leaf.

(1) Except where the dangerous drug is lawfully in transit, no person shall be in possession of any dangerous drug mentioned in part I of the schedule, or trade in or be in possession of any dangerous drug mentioned in part II of the schedule, unless such trade and possession is authorized in accordance with the provisions of this Ordinance or any rules made thereunder.

(2) A person shall be deemed to trade in or be in possession of a dangerous drug if it is in his actual custody or is held by any other person subject to his control or for him or on his behalf.

*Any person who*

(a) aids, abets, counsels or procures the commission of any offence under sections 1, 5, 6 or 7 of this Ordinance, or

(b) in Palestine aids, abets, counsels or procures the commission in any place outside Palestine of any offence under the provisions of any corresponding law in force in that place, or does any act which, if committed in Palestine, would constitute an offence under sections 1, 5, 6 or 7 of this Ordinance,

shall be punishable with a like penalty as if he himself had committed the offence.

(3) Possession of the drugs mentioned in part II of the schedule shall be deemed to be authorized for the purpose of this Ordinance if:—

(a) the possessor is a licensed pharmacist and the drugs are kept on his licensed premises;

(b) the possessor is a licensed medical practitioner, dentist or veterinary surgeon authorized under any Ordinance concerning medical practitioners, dentists or veterinary surgeons to keep such drugs;

(c) the possessor proves that the drug in his possession was purchased by him from a licensed pharmacist and such sale was conducted in accordance with the provisions of the Public Health (Pharmacy) Ordinances, 1919-1956, or that the drug was obtained from a medical practitioner or veterinary surgeon allowed to dispense drugs or medicine in accordance with section 16 thereof;

95. Manufacture, preparation, and conversion of dangerous drugs prohibited.

Trade in and possession of dangerous drugs prohibited save under licence.

90. Aids, abets, counsels or procures the commission of any offence under this Ordinance.

97. Aids and abets the commission of any offence under this Ordinance.

Any person who does any act which he is prohibited from doing under this Ordinance shall be guilty of an offence under this Ordinance.

Authorized possession.

96. Possession of dangerous drugs mentioned in part II of the schedule shall be deemed to be authorized for the purpose of this Ordinance if:—

79

(2) (d) it is authorized by any rule made under this Ordinance.

H.R.

10. If a Magistrate is satisfied that there is reasonable ground for suspecting that, in contravention of the provisions of this Ordinance or any rule made hereunder, any dangerous drug is in the possession or under the control of any person in any premises, or that any document relating to or connected with any transaction which was, or would be, if carried out, an offence against this Ordinance, or in the case of a transaction carried out or intended to be carried out in any place outside Palestine, an offence against the provisions of any law therein in force, is in the possession or under the control of any person in any premises, he may grant a search warrant authorizing any Police Officer at any time within one month from the date of the warrant to enter the premises named in the warrant, and to search the premises and any person found therein, and, if there is reasonable ground for suspecting that an offence against this Ordinance has been committed in relation to any such drugs which may be found in the premises or in the possession of any such person, or that any document which may be so found is such a document, to seize and detain the drugs or the document.

Search warrant for premises in relation to suspected offence.

11. The Arrest of Offenders and Searches Ordinance, 1924 shall apply to search warrants under this Ordinance:

Application of Arrest of Offenders and Searches Ordinance, 1924

Provided that the provisions of section 17 of the said Ordinance shall not be applicable.

Right of entry and inspection.

91/1

12. The Director may at all reasonable times enter upon the premises of any person authorized to be in possession of dangerous drugs under section 2(a), (b) and (d) of this Ordinance for the purpose of examining stocks of dangerous drugs held by such person and the records and registers of transactions in dangerous drugs prescribed to be kept by such person in accordance with this Ordinance or any rules made thereunder, and may require such person to produce for inspection all documents, invoices and authorizations relating to his transactions in dangerous drugs.

Any person who refuses to grant entry to the Director to such premises or obstructs or impedes either by himself or by a third person the entry of the Director, or fails to produce on demand all stocks of dangerous drugs kept by him or under his control, or the records and registers prescribed to be kept by him or other documents relating to his transactions in dangerous drugs required by the Director, shall be guilty of an offence under this Ordinance.

Failure to keep records and registers

13. Any person who being required by this Ordinance or the rules made thereunder to maintain records and registers of transactions in dangerous drugs fails to do so in the manner prescribed shall be guilty of an offence under this Ordinance.

Offence in connection with premises used for sale or smoking of opium or hashish, etc.  
91. K.A. 7/10/16

14. If any person :—

- (a) being the occupier of any premises permits those premises to be used for the purpose of the preparation of opium or hashish for smoking or the sale or smoking of prepared opium or of hashish; or
- (b) is concerned in the management of any premises used for any such purpose as aforesaid; or
- (c) has in his possession any pipes or other utensils for use in connection with the smoking of opium or hashish or any utensils used in connection with the preparation of opium or hashish for smoking; or
- (d) smokes or otherwise uses prepared opium or hashish, or frequents any place used for the purpose of opium or hashish smoking;

he shall be guilty of an offence under this Ordinance.

Powers to make rules, orders and notices.

Sec. 33 (V. of Rules)  
Ord. 42/15

15.—(1) The High Commissioner may, with the approval of the Secretary of State make rules for the effective execution of this Ordinance and without prejudice to the generality of the powers so conferred may :—

- (a) prescribe the procedure governing the import, export, and transit of dangerous drugs and the forms of authorization or certificates to be obtained and used in connection therewith;
- (b) provide for the keeping of proper records of the purchase and disposal of dangerous drugs by persons authorized to be in possession of such drugs;
- (c) regulate the issue by medical practitioners, dentists, or veterinary surgeons of prescriptions for any dangerous drugs and the disposing of such prescriptions, and the sale and distribution of dangerous drugs.

(2) The High Commissioner may by order apply the terms of this Ordinance with such modifications as may be specified in the order to any of the following drugs, that is to say :—

Methylmorphine (commonly known as Codeine)  
Ethylmorphine (commonly known as Dionin)

and their respective salts.

(3) The High Commissioner may by notice published in the Gazette :—

- (a) add to the schedule any new derivatives of morphine or cocaine or any other alkaloids of opium or any other drug of whatever kind which is likely to be productive, if improperly used, or which is capable of being converted into a substance which is, or is likely to be productive if improperly used, of

4/10/16

ill effects substantially of the same character or nature as, or analogous to those produced by morphine or cocaine;

(b) ~~modify or exclude any section of the schedule;~~

(c) ~~exempt any preparation containing dangerous drugs which cannot give rise to the habit on account of the ingredients with which it is compounded and which in practice preclude its recovery.~~

~~16. (1) Every person guilty of an offence under this Ordinance shall in respect of each such offence be liable:-~~

Penalty. 92/10/11

~~(a) on conviction before a Chief Magistrate to imprisonment for a period not exceeding five years, or to a fine not exceeding five hundred pounds, or both such penalties;~~

Dep. Comm. 6/33

~~(b) on conviction before a Chief Magistrate to imprisonment for a period not exceeding one year, or a fine not exceeding one hundred pounds, or to both such penalties;~~

14/12

~~Provided that no person shall, on conviction for any offence of contravening or failing to comply with any rule under this Ordinance relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which this Ordinance applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding fifty pounds if the Court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connection with, the commission or intended commission of any offence against the Ordinance.~~

Cable Cases

2 years or 2 or 6-12.

9/10/11

~~(2) Where any person is convicted of an offence under sections 4, 5, 6, 7 and 11 of this Ordinance the Court shall confiscate any dangerous drugs, pipes or utensils in respect of which the offence has been committed. All such dangerous drugs and utensils shall be destroyed or shall be otherwise disposed of as the Court may think fit.~~ (k2)

Power of Court to confiscate.

92/10/11

any rules made by the Court

~~(3) Where a person convicted of an offence under this Ordinance is a company, the chairman and every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.~~

~~(4) In any proceedings against any person for an offence under this Ordinance or the rules made thereunder, it shall not be necessary to negative by evidence any certificate, licence, authorization, register or document produced as a matter of exception or defence.~~

Print of documents produced by defence

53/10/11



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- 11 -

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(g) Dihydroxycodeinone (of which the substance registered under the name of Eucodal is a salt), dihydrocodeinone (of which the substance registered under the name Dicoode is a salt), dihydromorphine (of which the substance registered under the name of Dilaudide is a salt), acetyldihydrocodeinone (of which the substance registered under the name of Actalione is a salt), dihydromorphine (of which the substance registered under the name of Paramorphan is a salt), their esters and the salts of any of these substances, and of their esters, morphine-N oxide (commonly known as N-morphine), morphine derivatives, and any other pentavalent nitrogen morphine derivatives.

(h) Thebaine and its salts, and (with the exception of methylmorphine, commonly known as Codeine, and ethylmorphine, commonly known as Dionin, and their respective salts), benzylmorphine and the other esters of morphine and their respective salts.

(i) Any preparation, admixture, extract or other substance containing any portion of any of the substances mentioned in paragraph (g) or in paragraph (h) of this part of the schedule.

Val. 1915 No. 252

3/25/15  
1st March, 1915  
225, 1st March, 1915  
92, 1st March, 1915

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A. G. WAI CHOPE  
High Commissioner.

See  
Dangerous Drugs (validation of P.L.S.) Ordinance  
No. 42/45

Page 201  
P. 8. 1457

Notwithstanding anything contained in sub-section (1) of Section 15 of the Dangerous Drugs Ordinance, 1936, the rules specified in the Schedule shall be deemed to be and to have always been valid for all their purposes.

1. The Dangerous Drugs Rules, 1936.
2. The Dangerous Drugs (Ordinance) Rules, 1936.

פקודת המכס

פרק ראשון: מבוא

הגדרות  
(תיקון תשכ"א)

בפקודה זו ובכל שאר דיני המכס —  
 "אריזה" — לרבות כל דבר שטובין המיועדים להובלה חבושים,  
 ג'סים, לוטים, כלולים או צוררים בו;  
 "ארץ-חוץ" או "חוץ-לארץ" — כל מקום שמחוץ לישראל;  
 "בעל", לענין טובין — הבעל, היבואן, היצואן, הנשגר או הסוכן  
 "אותם טובין, וכל המחזיק, או הזכאי לטובת-הנאה, בהם, או שיש לו  
 יטה עליהם או כוח לעשות בהם, וכל המתחזה כאחד מאלה, למעט  
 דינמס במילוי תפקידו הרשמי;  
 "בעל" לענין כלי-ההובלה — לרבות אדם הפועל כסוכנו של הבעל,  
 י"י שהבעל הרשמו לקבל דמי הובלה או תשלומים אחרים המשתלמים  
 י"י לאותם כלי הובלה;  
 "בעל רציף" — לרבות מי שהרציף תפוס על ידיו;  
 "גובה מכס" — המנהל וכל גובה מכס, וכן פקיד ראשי הממלא  
 תפקיד באותה שעה ובאותו מקום וכל פקיד מכס הממלא תפקיד באותו  
 י"י;  
 "הברחה" — ייבואם של טובין, או ייצואם, או הובלתם לאורך  
 י"י או דרך גבולות היבשה, בכוונה להונות את האוצר או לעקוף כל  
 י"י, הגבלה או תקנה בענין ייבואם, ייצואם והובלתם של טובין  
 י"י, ולרבות כל נסיון לעשות אחד המעשים האלה בכוונה כאמור;  
 "הובלה שלא כדין", לענין טובין מוברחים או מחולטים —  
 לתם שלא על פי רשות;

י"י מדינת ישראל, נוסח חדש, מס' 3, תשי"ז, עמ' 39 (תשכ"א 78);  
 י"י: סי"ח 327, תשכ"א עמ' 28;  
 י"י: תשכ"ב עמ' 82;  
 י"י: תשכ"ה עמ' 118;  
 י"י: תשכ"ח עמ' 157 (חוק מסים עקיפים (מס שטולם ביתר או בחסר), תשכ"ח—1968);  
 י"י: תשל"ב (9.12.1971) עמ' 16.

77/14

מקודת המכס

(3) מי שבהחזקתו או במרותו או בפקוחו טובין שייך אותה שעה אסור או מוגבל או מוסדר והוא מתכוון לה: או יודע שיש כוונה להבריחם.

(ב) קברניט או בעל כלי-שיט או כלי-הובלה המשתמש, או: ביודעין להשתמש, בכלי-שיט או בכלי-הובלה שלו להברחת טובין להובלה שלא כדין של טובין מבורחים או מחולטים, דינו - ה: שנקבעו בסעיף-קטן (א).

(ג) נעברה העבירה הנזכרת בסעיף-קטן (א) (3) במצב: שמדינת ישראל מעורבת בה, מותר להגדיל את העונש כדי מאסר: או קנס של 500 לירות.

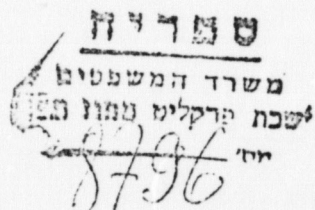
212. (א) אלה דינם מאסר שנתיים או קנס 500 לירות או שני: כאחד:

- (1) המשתמש מתשלום מכס שיש - למו;
- (2) המשיג הישבון שלא הגיע לו על פי דין;
- (3) המכין, המעביר או המציג תעודה שהיא, כ: חשבון-מכר אמיתי ולמעשה איננו כזה;
- (4) המגיש רשומון כוזב או לא נכון בפרט מסויים;
- (5) המביא לישראל טופס או נייר אחר הנחה: שאפשר לכתוב תרפו ולהשתמש בו כחשבון-מכר של הבאים מארצות-חוץ, או המחזיק טופס או נייר כא: הוכיח שיש לו הצדק כדי להחזיקו;
- (6) המוסר בהצהרה או בתעודה שהוגשו לפק: אמרה שאינה נכונה או שאינה מדוייקת בפרט נסיו: המגיש או המוסר לפקיד-מכס הצהרה או תעודה ש: אמרה כזו;
- (7) המוציא מרשותו טובין שנפטרו ממכס מחמת: בשביל צבא-הגנה לישראל, או בשביל מוסד או אדם: לייבא טובין אלה בלא מכס, ומעבירם לכל חברה, נס: אדם שאינם זכאים לייבא אותם טובין בלי מכס, ולא: תחילה למנהל על פרטי העברה זו;
- (8) המשנה במרמה תעודה או מסמך או המזיי: חתימת-יד, ראשי-תיבות או סימנים אחרים של פק: או שפקיד-מכס משתמש בהם, לאימות מסמך או:

עבירות מכס  
אחרות  
(תיקון השכ"א)

להבטיחת  
לרשות-המכס  
(9) המטען  
תפקידו;  
(10) המטען  
אותם או ה  
(11) המסר  
המסר לר  
(12) המוכר  
אותם לש  
לא פורטו ב  
(13) המוכר  
מבורחים או  
(ג) שום דבר הא  
ושיון שניתן לו בה  
כל קנס שהטיל ב  
ת סעיף 231, י  
בעיקולם ובמכירת  
כל העבר, על  
אחר, דינו  
ס כאחד.  
(א) העיירה  
כל או נייט  
(1) המ  
הציה ע  
(2) המ  
(3) המ  
הוכיח ש  
(4) מ  
כאמית  
(5) המ

1715



# LAWS OF THE STATE OF ISRAEL

NEW VERSION

*English Text, Prepared at the Ministry of Justice  
(Up to date to December 31, 1967)*

VOL. 1

PUBLISHED BY THE GOVERNMENT PRINTER

77/16

CUSTOMS ORDINANCE (NEW VERSION) \*  
(As on December 31st, 1967)

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17-17

The following are liable to imprisonment for six months or a fine of one hundred pounds and, in the case of possession of smuggled goods, to the payment of treble the duty on such goods: ---

- (1) any person who smuggles any goods;
- (2) any person who without lawful excuse, proof whereof shall lie upon him, has in his possession any smuggled goods or prohibited imports;
- (3) any person who has in his possession, power or control any goods of which the export is for the time being prohibited, restricted or regulated with intent to smuggle or knowing that they are intended to be smuggled.

(b) The master or owner of a vessel or means of conveyance who uses his vessel or means of conveyance, or knowingly suffers it to be used, in smuggling or unlawfully conveying any smuggled or forfeited goods is liable to the penalties prescribed by subsection (a).

(c) If the offence mentioned in subsection (a)(3) is committed whilst a state of war exists in which the State of Israel is engaged, the penalty may extend to imprisonment for two years or a fine of five hundred pounds.

Offence customs  
offences

S. CA. of 5721,  
p. 24

212. (a) The following are liable imprisonment for two years or a fine of 500 pounds or both such penalties: ---

- (1) any person who evades payment of any duty which is payable;
- (2) any person who obtains any drawback which is not legally due to him;
- (3) any person who prepares, passes or presents any documents purporting to be a genuine invoice which is not in fact a genuine invoice;
- (4) any person who makes an entry which is false or incorrect in any particular;
- (5) any person who brings into Israel, or has in his possession without lawful excuse, the proof of which shall lie upon him, any bill heading or other paper appearing to be a bill heading capable of being filled up and used as an invoice for goods from foreign parts;
- (6) any person who makes in any declaration or document produced to any customs officer any statement which is untrue or incorrect in any particular or produces or delivers to any customs officer any declaration or document containing any such statement;
- (7) any person who disposes of any goods which have been exempted from duty on the ground that they are imported for the Israel Defence Forces or for any institution or person who is entitled to import such goods free of duty, to any company, firm or person not entitled to import such goods free of duty, without prior notice of the particulars of disposal to the Director;

...any alters any document or  
...the seal, signature, initials or other  
...or used by, any customs officer for the verification  
of any such document or instrument or for the security of  
goods or any other purpose in the conduct of business relating  
to the Customs;

7-18

- (9) any person who misleads any customs officer in any particular likely to affect the discharge of his duty;
- (10) any person who moves, alters or interferes with, except by authority, any goods subject to the control of the Customs;
- (11) any person who refuses or fails to answer questions or to produce documents;
- (12) any person who sells or exposes for sale or has in his possession for sale or for the purpose of trade on board any ship in a port any goods not shown in the ship's report as required by section 53;
- (13) any person who sells or offers for sale any goods as prohibited imports or smuggled goods.

(b) Nothing in this section shall affect the rights of any person acting under a licence issued to him in accordance with section 200.

213. Any fine imposed by the court in a customs prosecution or by the Director in accordance with the provisions of section 231 shall be deemed to be a fine imposed in a criminal action and may be recovered by attachment and sale of any immovable or movable property.

Recovery of  
fine.

214. Any person who contravenes any of the provisions of this Ordinance for which no other penalty is prescribed in this Ordinance is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.

General  
penalty.

215. (a) There shall be guilty of an offence against this Ordinance any person who, in regard to any prohibited, restricted or regulated import to which this section applies does any of the following things, namely:—

Special  
provisions in  
relation to  
prohibited  
imports.

- (1) without any reasonable excuse, proof whereof shall lie upon him, has in his possession on board any ship any such import;
- (2) smuggles, or attempts to smuggle, into Israel any such import;
- (3) without lawful excuse, proof whereof shall lie upon him, has in his possession any such import which has been smuggled into Israel;
- (4) aids, abets, counsels or procures, or is in any way knowingly concerned in, the smuggling into Israel of any such import;
- (5) fails to disclose to a customs officer on demand any knowledge in his possession or power concerning the smuggling or intended smuggling into Israel of any such import;



2  
COPY RECEIVED  
Thomas J. Cahill  
UNITED STATES ATTORNEY

2-19-76 JR